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July 11, 2012

FILED/ACCEPTED

**VIA HAND DELIVERY AND EMAIL**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

JUL 11 2012  
Federal Communications Commission  
Office of the Secretary

RE: MB Docket No. 12-113  
Retransmission Consent Complaint  
And Petition of Fox Television Holdings, Inc.

Dear Ms. Dortch:

Fox Television Holdings, Inc. ("Fox"), by and through its undersigned counsel, writes to reply to the Response of TV Max to Media Bureau Inquiries Dated June 13, 2012 (the "TV Max Response") filed on June 26, 2012 in the above-referenced docket. The TV Max Response in turn responded to a letter to TV Max, Inc. ("TV Max") from Steven A. Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau (the "FCC Letter"), filed in that same docket and dated June 13, 2012. In the FCC Letter, TV Max was asked to respond to certain allegations raised in a retransmission consent complaint filed by Fox and a reply filed by Fox in response to TV Max's answer to that complaint, both of which may also be found in the above-referenced docket.

After reviewing the TV Max Response, Fox believes that the facts therein only bolster its contention that TV Max has engaged in and continues to engage in the rampant retransmission of Fox stations' broadcast signals without consent:

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- *First*, TV Max for the first time fully and unconditionally admits in the TV Max Response that it serves many buildings in which it has failed to install alleged master antenna systems and regarding which it presents no plan to do so.<sup>1</sup> The continued retransmission of the Fox stations' broadcast signals to these buildings can only be read as a flagrant and ongoing intentional violation of the Commission's Rules. Moreover, as a result, TV Max's claim that it has installed the alleged master antenna systems at 100% of its buildings cannot be accurate.<sup>2</sup>
- *Second*, TV Max submits schematics for its alleged master antenna systems as an attachment to the TV Max Response that suggest that even in those buildings where it uses such systems to receive Fox stations' over the air signals, TV Max filters, processes and retransmits those signals to its end-users. TV Max clearly demonstrates this retransmission by transmitting some stations, including FOX KRIV 26, on a channel number other than that of the broadcast channel on which those stations are delivered over the air. This processing, filtering and renumbering makes the alleged master antenna systems described by TV Max ineligible for the retransmission consent exception contained in Section 76.64(e) of the Commission's rules. Please find attached to this letter as Attachment 1 the Declaration of Robert S. Murch, which addresses the TV Max systems as described in the TV Max Response.
- *Third*, TV Max continues to avoid making the plain statement that Fox stations' broadcast signals are actually received by all TV Max end-users through the use of the systems described in its schematics, even within the subset of buildings in which TV Max has installed alleged master antenna systems. TV Max says only that the schematics "describ[e] the technical components of facilities used by TV Max" to deliver an indeterminate subset of the television programming signals that it provides to end-users and that "[i]n all MDU buildings, the local off-air signals are *available for use* by all residents without the feed from TV

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<sup>1</sup> See TV Max Response, Attachment 1, Declaration of Thomas Balun Responding to June 13, 2012 Inquiries, at ¶¶ 3-4. Thomas Balun states: (i) that TV Max serves 245 MDU buildings, (ii) that "90 percent [of its installations at 'MDU buildings served by TV Max'] were completed before March 1, 2012, and the remaining 10 percent were completed by March 31, 2012," (iii) that it had installed alleged master antenna systems at 206 of those buildings as of March 31, 2012, and (iv) that the owners of the remaining facilities have not permitted TV Max to install the alleged master antenna systems or have not responded to TV Max inquiries.

<sup>2</sup> See *id.*

Max's fiber ring . . . ."<sup>3</sup> There is no indication that any of TV Max's subscribers actually receive the over-the-air signals directly through the alleged master antenna systems.

Fox continues to respectfully request that the Commission find TV Max in violation of both the Communications Act and the Commission's rules, and that it take prompt action to force TV Max to end its willful and egregious non-compliance with the law and the rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Antoinette Cook Bush", written over a horizontal line.

Antoinette Cook Bush  
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*Counsel to News Corporation and  
Fox Television Holdings, Inc.*

cc: William T. Lake, FCC  
P. Michele Ellison, FCC  
Michelle Carey, FCC  
Nancy Murphy, FCC  
Mary Beth Murphy, FCC  
Steven A. Broeckaert, FCC  
Diana Sokolow, FCC  
Carl E. Kandutsch

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<sup>3</sup> *Id.* at ¶ 6 (emphasis added).

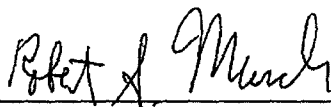
## **ATTACHMENT 1**

## DECLARATION

I, Robert S. Murch, hereby state as follows:

1. I am Vice President, Engineering and Systems, Fox Television Stations, Inc., a subsidiary of Fox Television Holdings, Inc., and the licensee of KRIV and KTXH ("Fox").
2. I submit this Declaration in connection with the Response of TV Max, Inc. ("TV Max"), dated June 26, 2012 (the "Response"), to the letter, dated June 13, 2012, to TV Max from Steven A. Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau.
3. To the best of my knowledge, information and belief, the schematics included as Attachment 4 of the Response show over the air television signals being combined into a stream with cable signals. In those schematics, the broadcast signals are filtered and processed in preparation for recombination with other channels transmitted within the TV Max cable stream. The channel line-ups included as Attachment 3 of the Response indicate that this filtration and processing re-shuffles the order in which the broadcast channels would otherwise be presented to the viewer over the air – *see, e.g.*, the apparent shifting of KRIV FOX 26 to Wavevision (TV Max) channel 9.
4. To the best of my knowledge, information and belief, the foregoing facts demonstrate that TV Max, to the extent that it filters and processes the master antenna broadcast signal as indicated in the schematics in order to provide Fox stations' broadcast signals as indicated in the channel line-up, is altering those broadcast signals and then retransmitting them within its cable stream.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11, 2012.



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Robert S. Murch  
Vice President, Engineering and Systems  
Fox Television Stations, Inc.  
1211 Avenue of the Americas 21<sup>st</sup> Floor  
New York, New York 10036

## CERTIFICATE OF SERVICE

I certify that on this 11th day of July, 2012, I caused the foregoing letter of Fox Television Holdings, Inc. to be served by Federal Express, except where email is indicated, on the following:

William T. Lake\*  
Chief, Media Bureau  
Federal Communications Commission  
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\* via email

  
Ceceile Patterson